



आरत का राजपत्र

The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 2

PART II — Section 2

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं 35] नई दिल्ली, सोमवार, दिसम्बर 10, 2012/ अग्रहायण 19, 1934 (शक)
No. 35] NEW DELHI, MONDAY, DECEMBER 10, 2012/AGRAHAYANA 19, 1934 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bill were introduced on 10 December, 2012:—

BILL No. 136 OF 2012

A Bill further to amend the Competition Act, 2002.

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Competition (Amendment) Act, 2012.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment of section 2.

12 of 2003.

2. In the Competition Act, 2002 (hereinafter referred to as the principal Act), in section 2, in clause (y), after the words "goods or services", the words "excluding the taxes, if any, levied on sale of such goods or provision of services" shall be substituted.

Amendment
of section 3.

3. In section 3 of the principal Act,—

(A) in sub-section (4), for the *Explanation*, the following *Explanation* shall be substituted, namely:—

'Explanation.—For the purposes of this sub-section,—

(a) "tie-in arrangement" includes any agreement requiring a purchaser of goods or recipient of services, as a condition of such purchase or provision of such services, to purchase some other goods or availing of some other services;

(b) "exclusive supply agreement" includes any agreement restricting in any manner the purchaser of goods or recipient of services in the course of his trade from acquiring or otherwise dealing in any goods or services other than those of the seller or service provider or any other person;

(c) "exclusive distribution agreement" includes any agreement to limit, restrict or withhold the output or supply of any goods or provision of services or allocate any area or market for the disposal or sale of the goods or provision of services;

(d) "refusal to deal" includes any agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or services are provided or from whom goods are bought or services are availed of;

(e) "resale price maintenance",—

(i) in case of goods includes any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged;

(ii) in case of services includes any agreement to provide services on condition that the prices to be charged on retailing of services by the recipient of services shall be the prices stipulated by the service provider unless it is clearly stated that prices lower than those prices may be charged;';

(B) in sub-section (5), in clause (i), after sub-clause (f), the following sub-clause shall be inserted, namely:—

"(g) any other law for the time being in force relating to the protection of other intellectual property rights;" .

Amendment
of section 4.

4. In section 4 of the principal Act, in sub-section (1), after the words "or group", the words "jointly or singly" shall be inserted.

Amendment
of section 5.

5. In section 5 of the principal Act, in the *Explanation*, in clause (b), in sub-clause (i), for the words "twenty-six per cent.", the words "fifty per cent." shall be substituted.

Insertion of
new section 5A.

6. After section 5 of the principal Act, the following section shall be inserted, namely:—

Power to
specify
different
value of assets
and turnover.

"**5A. Notwithstanding anything in section 5, the Central Government may, in consultation with the Commission, by notification, specify different value of assets and turnover for any class or classes of enterprise for the purpose of section 5.**".

Amendment
of section 9.

7. In section 9 of the principal Act,—

(a) in sub-section (1), the words "and other Members" shall be omitted;

(b) after sub-section (7), the following sub-section shall be inserted, namely:—

"(IA) The Members of the Commission shall be appointed by the Central Government from a panel of names recommended by a Selection Committee consisting of—

- (a) the Chief Justice of India or his nominee — Chairperson;
- (b) the Secretary in the Ministry of Corporate Affairs — Member;
- (c) the Secretary in the Ministry of Law and Justice — Member;
- (d) the Chairperson of the Commission — Member;
- (e) one expert of repute who has special knowledge of, and professional experience in, international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters including competition law and policy — Member.”.

8. In section 20 of the principal Act, in sub-section (2), the words "or reference" shall be omitted.

Amendment
of section
20.

9. In section 21 of the principal Act, in sub-section (1),—

Amendment
of section
21.

- (a) for the words "is raised by any party", the word "arises" shall be substituted;
- (b) for the words "authority may", the words "authority shall" shall be substituted;
- (c) the proviso shall be omitted.

10. In section 21A of the principal Act, in sub-section (1),—

Amendment
of section
21A.

- (a) for the words "is raised by any party", the word "arises" shall be substituted;
- (b) for the words "this Act", the words "any Act" shall be substituted;
- (c) for the words "Commission may", the words "Commission shall" shall be substituted;
- (d) the proviso shall be omitted.

11. In section 26 of the principal Act,—

Amendment
of section 26.

(a) in sub-section (7), after the words "in accordance with the provisions of this Act", the words "and make appropriate orders thereon after hearing the concerned parties" shall be inserted;

(b) in sub-section (8), after the words "in accordance with the provisions of this Act", the words "and make appropriate orders thereon after hearing the concerned parties" shall be inserted.

12. In section 27 of the principal Act,—

(i) in clause (b), after the proviso, the following proviso shall be inserted, namely:—

"Provided further that no such penalty shall be imposed by the Commission under this section without giving an opportunity of being heard to the producer, seller, distributor, trader or service provider, as the case may be;".

(ii) in clause (g), after the proviso, the following proviso shall be inserted, namely:—

"Provided further that while passing orders under this section, the Commission shall give due regard to the opinion given by the statutory authority, where such opinion has been obtained under the provisions of sub-section (1) of section 21A of this Act.".

Amendment
of section 27.

Amendment
of section 31.

13. In section 31 of the principal Act,—

(a) in sub-section (11), for the words "two hundred and ten days", at both the places where they occur, the words "one hundred and eighty days", shall be substituted;

(b) in sub-section (12), for the words "ninety working days", the words "one hundred and eighty days" shall be substituted.

Amendment
of section 41.

14. In section 41 of the principal Act,—

(a) for sub-section (3), the following sub-sections shall be substituted, namely:—

"(3) Where in the course of investigation, the Director General has reason to believe that any person or enterprise, to whom a notice under sub-section (2) has been issued,—

(a) has omitted or failed to provide the information or produce documents as required ; or

(b) would not provide the information or produce documents which will be useful for, or relevant to, the investigation; or

(c) would destroy, mutilate, alter, falsify or secrete the information or documents useful for, or relevant to, the investigation, then,

he may, after obtaining the authorisation from the Chairperson of the Commission,—

(i) enter, with such assistance and force, as may be required, the place or places where such information or documents are expected to be kept;

(ii) search such place or places, as the case may be;

(iii) seize documents and take copies of information, including electronic mail, hard disk of computer and such other media;

(iv) record on oath statements of persons having knowledge of the information or documents referred to in sub-clause (iii).

(4) The provisions of the Code of Criminal Procedure, 1973, relating to searches and seizure shall apply, so far as may be, to searches and seizure under sub-section (3).";

2 of 1974.

(b) the *Explanation* shall be omitted.

Amendment
of section 43.

15. In section 43 of the principal Act, for the words "punishable with fine", the words "liable to a penalty" shall be substituted.

Amendment
of section 51.

16. In section 51 of the principal Act, in sub-section (2), in clause (a), for the words "the Registrar", the words "the Secretary" shall be substituted.

Amendment
of section
53A.

17. In section 53A of the principal Act, in sub-section (1), in clause (a), for the words, brackets and figures "sub-sections (2) and (6)", the words, brackets and figures "sub-sections (2), (6), (7) and (8)" shall be substituted.

Amendment
of section 63.

18. In section 63 of the principal Act, in sub-section (3), after the words "Every notification issued under", the word, figure and letter "section 5A", shall be inserted.

STATEMENT OF OBJECTS AND REASONS

The Competition Act was enacted in 2002 keeping in view the economic developments that resulted in opening up of the Indian economy, removal of controls and consequent economic liberalisation which required that the Indian economy be enabled to allow competition in the market from within the country and outside. It was subsequently amended in 2007 and 2009. The Competition Act, 2002, *inter alia*, provides for the following, namely:—

(a) establishment of the Competition Commission of India, which shall be an expert body and would function as a market regulator for preventing and regulating anti-competitive practices in the country in accordance with the provisions of the Act and it would also have advisory and advocacy functions in its role as a regulator which can also impose a penalty in certain cases specified in the Act;

(b) establishment of the Competition Appellate Tribunal, which shall be a three member quasi-judicial body headed by a person who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court to hear and dispose of appeals against any direction issued or decision made or order passed by the Competition Commission and to adjudicate claims on compensation and for passing of orders for the recovery of compensation from any enterprise for any loss or damage suffered as a result of any contravention of the provisions of the Act.

2. The Competition Commission of India (the Commission) has become fully functional since 2009. In the light of the experiences gained in its operation and the working of the Commission, the Government of India in June, 2011, constituted an Expert Committee to examine and suggest the modifications in the Competition Act, 2002. As suggested by the Expert Committee, the Central Government has decided to amend the said Act and therefore, the Competition (Amendment) Bill, 2012 is being introduced.

3. The Competition (Amendment) Bill, 2012, *inter alia*, provides the following, namely:—

(a) to insert a new sub-clause (g) in clause (i) of sub-section (5) of section 3 so as to provide that anti-competitive agreements shall not restrict the matters regarding the protection of intellectual property rights for the purposes of clause (i) of sub-section (5) of the said section;

(b) to amend section 4 of the Act relating to abuse of dominant position so as to provide that no enterprise or group either jointly or singly shall abuse its dominant position;

(c) to amend sub-clause (i) of clause (b) in the *Explanation* to section 5 so as to increase the percentage of voting rights from twenty-six per cent. or more to fifty per cent. or more for the purpose of regulation of combinations;

(d) to insert a new section 5A in the Act so as to confer power upon the Central Government to specify, in consultation with the Commission, different value of assets and turnover for any class of enterprises for the purpose of section 5 of the Act;

(e) the reference of issues by the Statutory Authority to the Commission and the Commission to the Statutory Authority are made mandatory;

(f) to empower the Commission to decide the matter after hearing the concerned parties in cases where the Commission may not agree with Director General's investigation;

(g) to make provision that no penalty shall be imposed by the Commission for contravention of the provisions of section 3 or section 4 without giving an opportunity of being heard to the concerned person;

(h) to amend sub-section (11) of section 31 so as to reduce the period from two hundred and ten days to one hundred and eighty days within which the Commission has to pass an order or issue direction on combinations and also to amend sub-section (12) of the said section so as to increase the period from ninety working days to one hundred and eighty days to bring the time period on par with sub-section (11);

(i) to amend section 51 of the Act so as to substitute the expression “the Secretary” in place of the “the Registrar” in clause (a) of sub-section (2) of the said section as there is no post of the Registrar in the Commission.

4. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 16th November, 2012.

SACHIN PILOT

BILL NO. 137 OF 2012

A Bill further to amend the Governors (Emoluments, Allowances and Privileges) Act, 1982.

BE it enacted by Parliament in the Sixty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Governors (Emoluments, Allowances and Privileges) Amendment Act, 2012.

Short title
and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In section 2 of the Governors (Emoluments, Allowances and Privileges) Act, 1982 (hereinafter referred to as the principal Act), for clause (a), the following clauses shall be substituted, namely:—

Amendment
of section 2.

‘(a) “ex-Governor” means a person who has been the Governor of a State or two or more States;

(aa) “Governor” means the Governor, or any person discharging the functions of the Governor, of any State or of two or more States;’.

Insertion of
new section
12A.

3. After section 12 of the principal Act, the following section shall be inserted, namely:—

Entitlement of
ex-Governor
to secretarial
assistance.

“12A. Subject to any rules made in this behalf, the ex-Governor shall, for the remainder of his life, be entitled to secretarial assistance of one Personal Assistant on reimbursement basis:

Provided that where such ex-Governor is re-appointed to the office of the Governor or elected to Parliament or the State Legislature or appointed to any office of profit under the Union or a State Government, he shall not be entitled for such secretarial assistance for the period during which he holds such office.”.

Amendment
of section 13.

4. In section 13 of the principal Act, in sub-section (2), after clause (g), the following clause shall be inserted, namely:—

“(h) the manner of providing secretarial assistance and reimbursement under section 12A.”.

STATEMENT OF OBJECTS AND REASONS

As per the Governors' (Emoluments, Allowances and Privileges) Act, 1982 the Governor is entitled to emoluments amounting to one lakh ten thousand rupees per month. However, the said Act does not provide for any pension or post-retirement benefits to ex-Governors except medical facilities governed by the rules or orders issued by the Ministry of Health and Family Welfare, from time to time. Keeping in view the high constitutional office that a Governor holds and considering the contributions in public discourse that they would continue to make after they retire, it is proposed to provide the secretarial assistance to ex-Governors in the form of one Personal Assistant, which the ex-Governor concerned may appoint on reimbursement basis, during his life time. However, he shall not be eligible for such secretarial assistance for the period during which he is re-appointed to the office of Governor or elected to Parliament or the State Legislature or appointed to any office of profit under the Union or a State Government.

2. The Bill seeks to achieve the above objects.

SUSHIL KUMAR SHINDE.

NEW DELHI,
The 30th November, 2012.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF INDIA

[Copy of letter No. 7/31/2011-M&G, dated 30th November, 2012 from Shri Sushil Kumar Shinde, Minister of Home Affairs to the Secretary-General, Lok Sabha]

The President, having been informed of the subject matter of the Governors (Emoluments, Allowances and Privileges) Amendment Bill, 2012, recommends the introduction of the Bill in Lok Sabha under article 117(1) of the Constitution as also the consideration of the Bill by Lok Sabha under article 117(3) of the Constitution.

FINANCIAL MEMORANDUM

Clause 3 of the Bill seeks to insert new section 12A so as to provide for secretarial assistance to an ex-Governor in the form of one Personal Assistant, on reimbursement basis, during his life time and shall not be eligible for such secretarial assistance for the period during which he is re-appointed to the office of Governor or elected to parliament or the State Legislature or appointed to any office of profit under the Union or a State Government.

2. In order to implement the aforesaid provision it is estimated that, an approximate amount of rupees one crore ninety-five lakh per annum would be involved. The said expenditure will be met from the Consolidated Fund of India.

3. This Bill, if enacted, will not incur any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 4 of the Bill seeks to amend section 13 of the Governors (Emoluments, Allowances and Privileges) Act, 1982, relating to the power to make rules, by inserting clause (h) in sub-section (2) of section 13. Clause (h) proposed to be so inserted empowers the President to make rules for the manner of providing secretarial assistance and reimbursement thereof under section 12A.

2. The rules made by the President are required to be laid before Parliament. The matters in respect of which rules may be made by the President are matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

T.K. VISWANATHAN,
Secretary-General.